IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ROYCE ASHBERRY, *Plaintiff*,	§ § §	
v.	§ §	Case No.
BREITBURN MANAGEMENT COMPANY, LLC, *Defendant*.	§ § § §	

COMPLAINT

Plaintiff Royce Ashberry sues his former employer, Defendant Breitburn Management Company, LLC (hereinafter "Breitburn"). In support, Ashberry shows the following:

Nature of the Case: This is an Age Discrimination Case

1. Breitburn suspended Ashberry, age 70, in mid-July 2016. Breitburn then fired Ashberry about one week later. Breitburn has since replaced with Ashberry with an individual who is younger than Ashberry by ten years or more.

A. On at least two separate occasions during Year 2016, Ashberry's immediate supervisor has told Ashberry that Ashberry was "***too old***" to perform certain job tasks.

2. Breitburn's decisions referenced in paragraph 1 *supra* constitute unlawful discrimination in violation of the Age Discrimination in Employment Act, 29 U.S.C. §623(a) ("Prohibition of age discrimination")("ADEA").

3. Breitburn's decisions referenced in paragraph 1 *supra* constitute unlawful discrimination in violation of TEX. LAB. CODE §21.051 ("Discrimination by Employer").

Parties

4. Plaintiff Royce Ashberry is an individual. Ashberry resides in Kilgore, Texas.

A. Ashberry was an "employee" of Breitburn as that term is defined in 29 U.S.C. §630(f) at all times from his date of hire there through the last day of his employment there in July 2016.

B. Breitburn was an "employer" of Ashberry as that term is defined in 29 U.S.C. §630(b) at all times from the date when it put Ashberry on its payroll through the last day of Ashberry's employment there in July 2016.

(1) Breitburn had twenty or more individuals on its payroll for each working day in each of twenty or more calendar weeks during Year 2016.

(2) Breitburn had twenty or more individuals on its payroll for each working day in each of twenty or more calendar weeks during Year 2015.

C. Ashberry was an "employee" of Breitburn as that term is defined in TEX. LAB. CODE §21.001(7) at all times from his date of hire there through the last day of his employment there in July 2016.

D. Breitburn was an "employer" of Ashberry as that term is defined in TEX. LAB. CODE §21.001(8)(A) at all times from the date when it put Ashberry on its payroll through the last day of Ashberry's employment there in July 2016.

(1) Breitburn had fifteen or more individuals on its payroll for each working day in each of twenty or more calendar weeks during Year 2016.

(2) Breitburn had fifteen or more individuals on its payroll for each working day in each of twenty or more calendar weeks during Year 2015.

5. Defendant Breitburn Management Company, LLC ("Breitburn") is a corporation. Breitburn was incorporated in Delaware, and it is currently in good standing.

A. Breitburn may be served with process by serving its **registered agent, CT Corporation System,** at the following location – **1999 Bryan Street, Suite 900, Dallas, Texas 75201,** or wherever else it may be found.

Jurisdiction

6. This Court has original, subject matter jurisdiction over this action. That is because Ashberry's ADEA claim presents a federal question. *See* 28 U.S.C. §1331; *see also* 28 U.S.C. §1343(a)(4) ("civil rights").

7. This Court has supplemental jurisdiction over Ashberry's TEX. LAB. CODE §21.051 claim by reason of 28 U.S.C. §1367(a).

8. The Court has personal jurisdiction, both specific and general, over Breitburn. That is because Breitburn conducts business in Texas, because Ashberry's claims for relief arose in Texas, and because Breitburn is amenable to service by this Court.

Venue

9. Venue is proper in this judicial district. That is because a substantial part of the events or omissions giving rise to Ashberry's claims occurred here. *See* 28 U.S.C. §1391(b)(2).

Material Facts

10. According to Breitburn's records, Ashberry's date of birth is in Year 1946.

A. Ashberry gives only the year of his birth so as to comply with FED. R. CIV. P. 5.2(a)(2) ("Privacy Protection for Filings Made with the Court").

11. Breitburn employed Ashberry as a pumper during Ashberry's employment there in

Year 2016.

12. Throughout all of Year 2016, Breiturn had on its payroll a certain Mr. Ronnie Jackson who, among other things, was Ashberry's immediate supervisor.

A. Jackson's job title was "Pumper Foreman" during the period of time referenced in this paragraph.

13. Through all of his employment during Year 2016, Breitburn assigned Ashberry to a facility that is located at 2301 Old Longview Highway in Gladewater, Texas 75647 ("Gladewater Office").

14. Breitburn assigned Jackson to the Gladewater Office throughout all of Year 2016.

15. Throughout all of Year 2016, Breitburn employed an individual named Mr. Bill Priddy.

A. During this time Priddy's job title was "Superintendent."

B. During this time Breitburn assigned Priddy to the Gladewater Office.

C. During this time Priddy was the highest-ranking employee whom Breitburn assigned to the Gladewater Office.

16. Breitburn gave Ashberry more than one job performance evaluation while it had Ashberry on its payroll.

17. At all times during Year 2015, and from January 1, 2016 through July 22, 2016, Breitburn had one or more written policies/procedures that addressed the topic of employee discipline.

18. Before July 13, 2016, Breitburn had never suspended Ashberry without pay.

19. Before July 13, 2016, Breitburn had never suspended Ashberry with pay.

20. Before July 13, 2016, Breitburn had never given Ashberry a written warning, regardless of appellation, *e.g.*, counseling statement, *etc.*

21. At no time during Year 2016 was Breitburn aware of Ashberry suffering from any disability that prevented Ashberry from performing any of the essential job duties of a pumper for Breitburn.

22. At no time during Year 2016 was Breitburn aware of Ashberry suffering from the loss of any necessary professional license that prevented Ashberry from performing any of the essential job duties of a pumper for Breitburn.

23. At no time during Year 2016 was Breitburn aware of Ashberry suffering from any occurrence that rendered him unfit for the job of pumper at Breitburn.

24. Sometime between January 1, 2016 and July 14, 2016, Jackson told Ashberry that Ashberry was "too old" to do a partiular task.

25. In July 2016, Jackson told Ashberry that Ashberry was "too old" to do a particular task.

26. Sometime between July 14, 2016 and July 17, 2016, Breitburn suspended Ashberry.

27. Sometime between July 14, 2016 and July 17, 2016, Breitburn suspended Ashberry with pay.

28. Sometime between July 14, 2016 and July 17, 2016, Breitburn suspended Ashberry without pay.

29. Breitburn suspended Ashberry on July 15, 2016.

30. Breitburn suspended Ashberry with pay on July 15, 2016.

31. Breitburn suspended Ashberry without pay on July 15, 2016.

32. Breitburn fired Ashberry.

33. Breitburn fired Ashberry in July 2016.

34. Breitburn fired Ashberry during the second half of July 2016.

35. Breitburn fired Ashberry on July 21, 2016.

36. It was Priddy who told Ashberry that Breitburn had decided to fire him (Ashberry).

37. In telling Ashberry that Breitburn had decied to fire him (Ashberry), Priddy told Ashberry the following -- ***"after talking to HR, they have decided to have you leave the company***."

38. In telling Ashberry that Breitburn had decied to fire him (Ashberry), Priddy did not tell Ashberry the reason(s) that Breitburn had relied on in support of its decision.

39. Sometime between July 21, 2016 and the filing of this lawsuit, Breitburn has replaced Ashberry.

40. Sometime between July 21, 2016 and its receipt of this lawsuit, Breitburn replaced Ashberry with an individual who, according to Breitburn's records, is younger than forty years of age.

41. Sometime between July 21, 2016 and its receipt of this lawsuit, Breitburn replaced Ashberry with an individual who, according to Breitburn's records, is younger than Ashberry.

42. Sometime between July 21, 2016 and its receipt this lawsuit, Breitburn replaced Ashberry with an individual who, according to Breitburn's records, is younger than Ashberry by at least ten years.

43. Sometime between July 21, 2016 and its receipt of this lawsuit, Breitburn has had some or all of the essential job duties previously performed by Ashberry performed by individuals who, according to Breitburn's employment records, were less than forty years of age at the time.

44. Sometime between July 21, 2016 and its receipt of this lawsuit, Breitburn has had some or all of the essential job duties previously performed by Ashberry performed by individuals who, according to Breitburn's employment records, were younger than Ashberry by at least ten years.

45. Sometime between July 21, 2016 and its receipt of this lawsuit, Breitburn learned from the Texas Workforce Commission ("TWC") that Ashberry had filed an application with that agency for unemployment benefits.

46. At no time between July 21, 2016 and its receipt of this lawsuit did Breiburn, or any person/entity on Breitburn's behalf, transmit to TWC anything tangible where Breitburn expressed opposition to Ashberry's application for unemployment benefits.

47. As a result of Breitburn's conduct, including the foregoing, Ashberry has sustained financial losses.

48. As a result of Breitburn's conduct, including the foregoing, Ashberry is continuing to sustain financial losses.

49. As a result of Breitburn's conduct, including the foregoing, Ashberry has sustained mental anguish.

50. As a result of Breitburn's conduct, including the foregoing, Ashberry is continuing to sustain mental anguish.

Count One – ADEA -- Discrimination (Suspension/Discharge)

51. Ashberry e-alleges and incorporates by reference all allegations set forth in paragraphs 10 through 50.

52. The ADEA makes it "unlawful for an employer -- (1) to . . . discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;" or "(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age[.]" 29 U.S.C. §623(a)(1) and (2).

A. Breitburn violated the statute quoted in this paragraph when it decided to suspend Ashberry, and Breitburn violated this statute again when it decided to fire Ashberry.

53. Ashberry has fully complied with the provisions of 29 U.S.C. §626(d) and all prerequisites to the filing of this claim have been fulfilled. *First*, Ashberry filed charge of discrimination number 450-2016-03785 ("Charge") with the U.S. Equal Employment Opportunity Commission ("EEOC"). 29 U.S.C. §626(d). *Second*, more than 60 days have elapsed from the filing of the Charge to the filing of this lawsuit, and at no time during those 60 days, or at any time thereafter, did EEOC commence an action to enforce Ashberry's rights. *Id.* Third, EEOC issued a right to sue letter on January 26, 2017, and Ashberry has filed this lawsuit fewer than 90 days from his receipt of same. *Id.* at §626(e).

54. Ashberry is entitled to an award of back pay, interest on back pay, reinstatement or in the alternative front pay, the value of lost employment benefits, and other appropriate legal and equitable relief within the scope of 29 U.S.C. §626(b).

55. Breitburn's violation of the ADEA was willful. Thus, Ashberry is entitled to an award of liquidated damages in addition to equitable relief. 29 U.S.C. §626(b).

56. Ashberry is entitled to recover reasonable attorney's fees and costs pursuant to 29 U.S.C. §626(b).

Count Two – Texas Labor Code – Discrimination (Suspension/Discharge)

57. Ashberry re-alleges and incorporates by reference all allegations set forth in paragraphs 10 through 50.

58. Section 21.051 of the Texas Labor Code reads in pertinent part as follows: "An employer commits an unlawful employment practice if because of . . . age the employer: (1) . . . discriminates in any . . . manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or (2) limits . . . an employee . . . in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee."

A. Breitburn violated the statute quoted in this paragraph when it decided to suspend Ashberry, and Breitburn violated this statute again when it decided to fire Ashberry.

59. Ashberry has satisfied all conditions precedent to the filing of this Count. *First*, the Charge that Ashberry filed with the EEOC was "dual filed" with the Civil Rights Division of the Texas Workforce Commission (TWC-CRD) pursuant to the EEOC-TWC-CRD Workshare Agreement. *See also* TEX. LAB. CODE §21.201 (referring to the filing of a "Complaint"). *Second*, Ashberry filed the Charge, a/k/a Complaint, on August 2, 2016, which is fewer than 180 days from July 2016, which is when Breitburn suspended him and/or discharged him. *Id.* at §21.201. *Third,* the Complaint was on file at EEOC for at least 180 days and was not resolved, after which

Ashberry requested, in writing, on multiple occasions, that TWC-CRD provide him with a written notice of his right to file a civil action. *Id.* at §21.252. On February 10, 2017, TWC-CRD did issue Ashberry a notice of right to file civil action, *id.*, and Ashberry has filed this claim with 60 days of receiving same. *Id.* at §21.254.

60. By reason of Breibturn's violation of TEX. LAB. CODE §21.051, Ashberry is entitled to receive an award of wages and employment benefits in the past ("back pay"), plus reinstatement or in the alternative front pay, and other appropriate equitable relief.

61. Also by reason of Breitburn's violation of TEX. LAB. CODE §21.051, Ashberry is entitled to recover compensatory damages in the past, which includes damages for emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses, as well as compensatory damages in the future, which includes damages for emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

62. Ashberry is entitled to an award of punitive damages against Breitburn pursuant to TEX. LAB. CODE §21.2585(b) because Breitburn engaged in discriminatory practices with malice or with reckless indifference to Ashberry's state-protected rights.

63. Ashberry seeks recovery of all interest that is lawfully available to him.

64. As the prevailing party, Ashberry is entitled to a reasonable attorney fee, as well as reasonable expert fees, as part of the costs. TEX. LAB. CODE §21.259.

Jury Demand

65. Pursuant to FED. R. CIV. P. 38(a), Ashberry demands a jury on all issues so triable.

Request for Relief

WHEREFORE, Plaintiff Royce Ashberry ("Ashberry) asks that Defendant Breitburn Management Company, LLC ("Breitburn") appear and answer, and that on trial of this action Ashberry have final judgment against Breitburn for the following relief:

1. Back pay, reinstatement or in the alternative front pay, the value of lost employment benefits, and other appropriate equitable relief as set forth in Counts One and Two;

2. Liquidated damages pursuant to 29 U.S.C. §626(b) as set forth in Count One;

3. Compensatory damages as set forth in Count Two;

4. Punitive damages as set forth in Count Two;

3. Attorney fees and costs as set forth in Counts One and Two;

4. Prejudgment and post judgment interest at the rates established by law; and,

5. Such other and further relief to which Ashberry may be justly entitled.

Dated: February 16, 2017

Respectfully submitted,

/s/
By: ___________________________________

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